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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 FIRST FED BANK, a Washington state
10 commercial bank,

11 Plaintiff,

12 v.

13 COLE WSTECH, LLC, an Illinois limited
14 liability company, RCWSTECH1157, LLC, an
Illinois limited liability company, and
RONALD N. COLE, an individual,

15 Defendants.

16 Case No. 3:24-cv-05732-TL

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**AMENDED COMPLAINT FOR
DECLARATORY RELIEF AND
BREACH OF CONTRACT**

Plaintiff First Fed Bank (First Fed) brings this action against Defendants Cole WSTECH, LLC, RCWSTECH1157, LLC, and Ronald Cole (Cole Defendants) under Rule 57 of the Federal Rules of Civil Procedure, the Federal Declaratory Judgment Act, 28 U.S.C. §2201, *et seq.* and other applicable law. In support of its amended complaint and petition for declaratory judgment and monies due, First Fed alleges as follows:

I. PRELIMINARY STATEMENT

1. This declaratory judgment action and claim for monies due arises from the Cole Defendants' defaults under certain commercial Loan Documents, and their challenge to the validity and enforceability of such Loan Documents.

2. In June 2022, Defendant Cole WSTECH, LLC (Cole WSTECH) executed a Business Loan and Security Agreement (Loan Agreement) with First Fed and made and delivered

AMENDED COMPLAINT FOR DECLARATORY RELIEF AND
BREACH OF CONTRACT - 1
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134777.0023/9899249.1

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1 a Promissory Note (Note) in the principal amount of \$1,500,000.00 (Loan). Under Section 7.4 of
2 the Loan Agreement and a separate Unconditional Guaranty of Payment and Performance
3 (Guaranty), Defendant Ronald Cole (Dr. Cole) is a personal guarantor of the Loan. The term “Loan
4 Documents,” as used herein, refers to the Loan Agreement, the Note, and the Guarantee
5 collectively.

6 3. Cole Defendants have called into question the validity and enforceability of the
7 Loan Documents by filing an action in Snohomish County Superior Court (State Court Action)
8 asserting, among other things, that the Loan Documents are invalid and unenforceable. After First
9 Fed removed the State Court Action to federal court, *Pacific Water Technology LLC, et al. v. Wear,*
10 *et al.*, No. 24-cv-01164-TL (U.S. District Court for the Western District of Washington), the Cole
11 Defendants voluntarily dismissed all of their claims against First Fed without prejudice under Rule
12 41(a)(1)(A)(i) on August 6, 2024 (Dkt. 10).

13 4. First Fed has administered the Loan in conformity with the Loan Documents and
14 applicable state and federal law.

15 5. Cole WSTECH and Dr. Cole breached by failing to make the requisite payments
16 when due under the Loan Documents, and filing the State Court Action against First Fed contesting
17 the validity and enforceability of the Loan Documents and the continuing liability of Cole
18 WSTECH and Dr. Cole thereunder, entitling First Fed to accelerate the Loan and seek a money
19 judgment against Cole WSTECH and Dr. Cole for the accelerated Loan obligation.

20 6. RCWSTECH1157, LLC is not a party to the Loan Documents but nonetheless
21 asserted the Loan Documents’ invalidity in the State Court Action. It is named as a defendant here,
22 despite its apparent lack of connection to the Loan Documents, because it sought the rescission or
23 invalidation of the Loan Documents in the State Court Action.

24 7. While the Cole Defendants had no claims pending against First Fed when this
25 action was filed, they continued to maintain that the Loan Documents are invalid and
26 unenforceable, and subsequent to this action have filed an action in state court affirming that they
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dispute the validity and enforceability of the Loan Documents. First Fed brings this declaratory judgment action and claim for monies due to clarify and settle the rights and obligations of the parties under the Loan Documents, and to recover as damages the sums now due and owing under the Loan Documents by reason of Cole WSTECH's and Dr. Cole's defaults. Specifically, First Fed seeks a declaratory judgment that the Loan Documents are valid and enforceable against the Cole Defendants and a judgment for monies due in the amount of the Accelerated Obligation (as defined below), plus attorneys' fees and costs and additional prejudgment interest at the contractual default rate until the date of judgment.

II. PARTIES

8. First Fed Bank is incorporated in Washington and has its principal office in Port Angeles, Washington. First Fed Bank is therefore a citizen of Washington.

9. Cole WSTECH is a limited liability company organized under the laws of Illinois and with its principal office in Decatur, Illinois. In the State Court Action, the Cole Defendants alleged facts suggesting that its owner, Dr. Cole, is a resident of Illinois and holds a license to practice dentistry in Illinois. Therefore, upon information and belief, Cole WSTECH is a citizen of Illinois, where it is organized and where its owner, a natural person, is domiciled.

10. RCWSTECH1157 is a limited liability company organized under the laws of Illinois and with its principal office in Decatur, Illinois. In the State Court Action, Cole Defendants alleged facts suggesting that its owner, Dr. Cole, is a resident of Illinois and holds a license to practice dentistry in Illinois. Therefore, upon information and belief, RCWSTECH1157 is a citizen of Illinois, where it is organized and where its owner, a natural person, is domiciled.

11. Upon information and belief, and based upon his own allegations in the State Court Action, Dr. Cole is a citizen of Illinois.

III. JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §1332 because this is an action between citizens of different states, and the amount in controversy exceeds

1 \$75,000, exclusive of interests or costs. Specifically, First Fed is a citizen of Washington, while
2 the Cole Defendants are each citizens of Illinois. The parties therefore have complete diversity of
3 citizenship. The amount in controversy is equal to the payments under the Loan Agreement when
4 it was entered, which included both interest and principal and thus exceeds the original principal
5 amount of \$1,500,00.00.

6 13. This Court has jurisdiction to enter a declaratory judgment under 28 U.S.C. §§ 2201
7 and 2202, and Federal Rule of Civil Procedure 57, because there is an actual controversy between
8 the parties. This controversy is ripe and justiciable.

9 14. Venue is proper under 28 U.S.C. § 1391 because this Court is in the judicial district
10 and division where a substantial part of the events giving rise to this action occurred. First Fed
11 issued the Loan Agreement from its headquarters in Clallam County, Washington

12 **IV. FACTS**

13 **A. Loan History**

14 15. On June 9, 2022, Cole WSTECH executed the Loan Agreement with First Fed Bank
15 in the principal amount of \$1,500,000.00 for the purchase or refinance of one or more water
16 dispensing systems. Copies of the Loan Agreement, the Note, and the Guaranty are attached as
17 Exhibits A-C, respectively, to this amended complaint.

18 16. The Loan proceeds were disbursed by First Fed at the direction of Cole WSTECH.
19 A copy of Cole WSTECH's Disbursement Request and Authorization is attached as Exhibit D to
20 this amended complaint.

21 17. Under the terms of the Note, Cole WSTECH promised and agreed to timely make
22 regular monthly payments of principal and interest on the Note on the fifth day of each month,
23 commencing July 5, 2022, and continuing each month thereafter until June 9, 2032, when the
24 outstanding principal balance of the Loan, together with all accrued and unpaid interest and all
25 other amounts due and owing under the Note, was due in full.

1 18. In the event of default, the Note provides for a late charge equal to five percent
2 (5%) of the delinquent payment amount, and default interest at a rate equal to eighteen percent
3 (18%) per annum.

4 19. Under Section 7.4 of the Loan Agreement and the separate Guaranty, Dr. Cole
5 personally, absolutely, and unconditionally guaranteed Cole WSTECH's obligations to First Fed
6 under the Loan Documents. A copy of the Guaranty is attached as Exhibit C to this amended
7 complaint.

8 20. First Fed, Cole WSTECH and Dr. Cole are also parties to a Letter Agreement re
9 Payment Deferral dated as of December 12, 2023, and subsequent Letter Agreement re Extension
10 of Payment Deferral dated as of April 1, 2024 (Deferral Agreements), under the terms of which
11 First Fed agreed to certain payment deferrals and Cole WSTECH and Dr. Cole released claims.
12 Copies of the Deferral Agreements are attached as Exhibit E to this amended complaint.

13 21. First Fed has fulfilled its own obligations under the Loan Documents.

14 22. First Fed is entitled to recover its attorneys' fees, costs, and expenses incurred in
15 enforcing the Loan Documents.

16 23. No conditions exist in regard to the negotiation, terms, execution, or enforcement
17 of the Loan Documents that would render any of them void, invalid, unenforceable, or subject to
18 the equitable remedy of rescission.

19 **B. The State Court Action**

20 24. On June 21, 2024, Cole Defendants, along with numerous other plaintiffs, filed an
21 amended complaint in the State Court Action against First Fed and other defendants in Snohomish
22 County Superior Court. A copy of the amended complaint in the State Court Action is attached as
23 Exhibit F to this amended complaint.

24 25. The amended complaint in the State Court Action asserted that the Loan Agreement
25 and Note between Cole WSTECH and First Fed, and Guaranty between Dr. Cole and First Fed,
26 are "void and/or should be rescinded." Ex. D. ¶¶ 205, 221.

1 26. The amended complaint in the State Court Action sought, among other things, an
2 order that the Loan Agreement, Note, and Guaranty are “void, invalid, rescinded, and/or
3 unenforceable under applicable law.” Ex. D, Request for Relief, ¶ 7; *see also id.* at ¶¶ 210, 225,
4 241, 277 (seeking rescission).

5 27. The amended complaint in the State Court Action sought “temporary, preliminary,
6 and permanent injunctive relief staying further disputed loan payments to … First Fed” under the
7 Loan Agreement, and “preventing [First Fed] from defaulting or accelerating the loans in [Cole
8 Defendants’] names pending the outcome of this litigation.” Ex D, Request for Relief, ¶ 8.

9 28. On August 2, 2024, First Fed removed the State Court Action to this Court.

10 29. On August 6, 2024, Cole Defendants dismissed their claims against First Fed
11 without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

12 30. On September 9, 2024, Cole Defendants and others filed an amended complaint
13 against First Fed, its parent corporation, and individual officers and directors in King County
14 Superior Court, alleging, *inter alia*, that the Loan Documents, the Note and the Guaranty were
15 invalid and unenforceable (King County Action).

16 **C. Defaults and Acceleration**

17 31. Cole WSTECH and Dr. Cole defaulted on their obligations under the Loan
18 Documents in that they failed to make the requisite payments when due. Specifically, Cole
19 WSTECH failed to make the monthly payment due and owing under the Note on August 5, 2024,
20 and all subsequent monthly payments due thereafter, and Dr. Cole failed to satisfy the amounts
21 due and owing under the Loan Documents in accordance with his Guaranty.

22 32. Cole WSTECH and Dr. Cole also defaulted on their obligations under the Loan
23 Documents on account of their filing of the initial State Court Action and the recently-filed King
24 County Action contesting the validity and enforceability of the Loan Documents and the
25 continuing liability of Cole WSTECH and Dr. Cole thereunder, causing First Fed in good faith to
26 deem itself insecure.

1 33. As a result of the aforementioned defaults, First Fed accelerated the Loan obligation
2 by notice issued to Cole WSTECH and Dr. Cole, and all amounts owing under the Loan
3 Documents are immediately due and payable.

4 34. All amounts owing under the Loan Documents bear interest at the contractual
5 default rate of eighteen percent (18%) per annum from October 3, 2024, until paid in full.

6 **D. Actual Controversy**

7 35. Since their voluntary dismissal without prejudice of their claims against First Fed
8 as first asserted in the State Court Action and now as re-asserted in the King County Action, Cole
9 Defendants continue to dispute the validity and enforceability of the Loan Agreement, the Note,
10 and the Guaranty.

11 36. There is an immediate, concrete, and existing controversy between the parties as to
12 the validity and enforceability of the Loan Documents. This controversy could be resolved through
13 the issuance of the declaratory judgment sought by First Fed in this case. Such a judgment would
14 bring specific, legal certainty to parties with adverse legal interests—namely, First Fed on the one
15 hand, and the Cole Defendants on the other.

16 37. As provided in the Loan Documents, First Fed is also entitled to a judgment for
17 monies due based on Cole WSTECH's and Dr. Cole's breach of contract.

18 **V. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

19 38. First Fed incorporates by reference paragraphs 1 through 37, above, as though fully
20 set forth herein.

21 39. An actual controversy currently exists between the parties concerning the validity
22 and enforceability of the Loan Documents. Cole Defendants have asserted—and continue to
23 maintain—that the Loan Documents are invalid and unenforceable, and that First Fed is legally
24 barred from calling a default or accelerating the Loan. First Fed contends that the Loan Documents
25 are each valid and enforceable. This controversy would be resolved if the Court were to award
26 First Fed the definite and concrete declaratory relief sought in this action.

1 40. First Fed seeks a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that:

2 a. The Loan Agreement and Note are valid and enforceable against Cole

3 WSTECH;

4 b. The Guarantee is valid and enforceable against Dr. Cole as the personal

5 guarantor of the Loan;

6 c. The Loan Documents are not void or voidable by Cole Defendants under

7 any doctrine or provision of state or federal law; and

8 d. Cole Defendants are not entitled to rescission of the Loan Documents under

9 any doctrine or provision of state or federal law, including, but not limited

10 to, the Washington Franchise Investment Protection Act, RCW 19.100, the

11 Washington State Securities Act, RCW 21.20, and the Uniform Voidable

12 Transactions Act, RCW 19.40.

13 **VI. SECOND CAUSE OF ACTION – BREACH OF CONTRACT AND CLAIM FOR**

14 **MONIES DUE**

15 41. First Fed incorporates by reference paragraphs 1 through 40, above, as though fully

16 set forth herein.

17 42. Cole WSTECH and Dr. Cole defaulted on their obligations under the Loan

18 Documents in that they failed to make the requisite payments when due and caused First Fed to

19 deem itself insecure by contesting the validity and enforceability of the Loan Documents and the

20 continuing liability of Cole WSTECH and Dr. Cole thereunder, as alleged in the State Court Action

21 and King County Action.

22 43. As a result, First Fed elected to accelerate the Loan obligation and all amounts

23 owing under the Loan Documents are immediately due and payable.

24 44. Cole WSTECH and Dr. Cole are indebted to First Fed under the Loan Documents

25 for the unpaid principal balance of \$1,325,409.46, plus accrued and unpaid interest through

26 October 2, 2024, in the amount of \$19,716.51, and late charges of \$1,661.54 (collectively, the

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“Accelerated Obligation”), together with attorneys’ fees, costs and expenses incurred since the Cole Defendants challenged the validity of the Loan Documents, and additional prejudgment interest at the contractual default rate of eighteen percent (18%) per annum from October 3, 2024, until the date of judgment.

45. First Fed is entitled to post-judgment interest on the entire judgment amount at the contractual default rate, and recovery of all of its attorneys' fees, costs and expenses pursuant to the terms of the Loan Documents.

REQUEST FOR RELIEF

Plaintiff First Fed Bank respectfully requests judgment in its favor and against Cole Defendants as follows:

1. A declaratory judgment in favor of First Fed and against Cole Defendants that the
Loan Documents are valid and enforceable in accordance with their express written terms;

2. A judgment in favor of First Fed and against Cole WSTECH and Dr. Cole, jointly and severally, in the amount of the Accelerated Obligation, plus additional prejudgment interest at the contractual default rate of eighteen percent (18%) per annum from October 3, 2024, until the date of judgment;

3. An order awarding First Fed its attorneys' fees and costs incurred in defending and enforcing the Loan Documents;

4. An order providing that the total judgment amount shall bear interest on the declining balance at the contractual default rate of eighteen percent (18%) per annum from the date of entry of the judgment until paid in full; and

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5. Any other remedy that the Court deems just and proper.
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DATED: October 4, 2024

LANE POWELL PC

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